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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/667,144	09/19/2003	Michael T. Carley	701879.4008	7207
22913	7590	05/02/2007		
WORKMAN NYDEGGER (F/K/A WORKMAN NYDEGGER & SEELEY) 60 EAST SOUTH TEMPLE 1000 EAGLE GATE TOWER SALT LAKE CITY, UT 84111			EXAMINER BACHMAN, LINDSEY MICHELE	
			ART UNIT 3734	PAPER NUMBER
			MAIL DATE 05/02/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/667,144

Applicant(s)

CARLEY ET AL

Examiner

Lindsey Bachman

Art Unit

3734

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 19 January 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☐ Claim(s) 17-22 and 36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 17-22 and 36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 January 2007 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

This Office Action is in response to Applicant's Amendment filed on 19 January 2007.

#### ***Response to Arguments***

1. Applicant's arguments filed 19 January 2007 with regards to Claims 17-19 have been fully considered but they are not persuasive. Applicant argues that the device disclosed by Spence is not movable between a planar configuration and a configuration that is transverse to the planar configuration. However, since the device disclosed by Spence is disclosed as malleable, it can be moved between these two configurations.
2. Applicant's arguments with respect to Claims 20-22 and 36 have been considered but are moot in view of the new ground(s) of rejection.

#### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

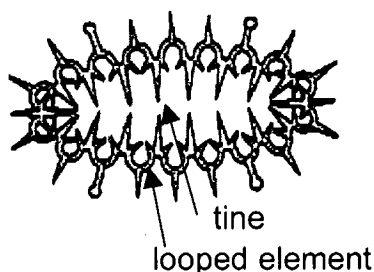
A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. **Claim 17-20 and 36 are rejected under 35 U.S.C. 102(b) as being anticipated by Spence, et al. (US Patent 6,488,692).**
5. Spence'692 discloses a clip having a ring-shaped body (MR) defining a plane and disposed about a central axis (intersection of lines B-B and MLA in Figure 7), the body (MR) is capable of being moved from a substantially planar configuration to a

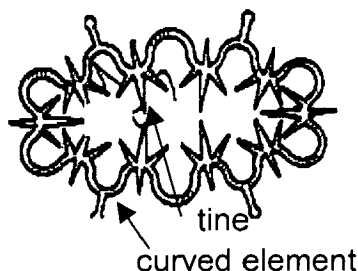
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transverse configuration because it is malleable (column 8, lines 16-23). Further, the body (MR) contains a plurality of loop elements (see alternate embodiment in Figure 9b) and a plurality of tines (see labeled copy of Figure 9b below) extending from the looped elements towards the central axis. Further, Spence'692 teaches spring elements (MD) that can be used to shape the clip (column 8, lines 25-30).



6. Regarding Claim 18, the spring element (MD) taught by Spence'692 is biased to move the tips of the tines into the relaxed state.
7. Regarding Claim 19, Spence'692 discloses the looped elements (see Figure above) is a series of outer curved regions connected to one another and the tines (see Figure above) extend from the connection regions of the adjacent curved regions.
8. Regarding Claims 20 and 36, Spence'692 discloses a clip having a ring-shaped body (MR) defining a plane and disposed about a central axis (intersection of lines B-B and MLA in Figure 7), the body (MR) is capable of being moved from a planar configuration to a transverse configuration because it is malleable (column 8, lines 16-23). Further, the body (MR) contains a plurality of curved elements (see alternate embodiment in Figure 9c) and a plurality of arcuate tines (see labeled copy of Figure 9c below and arcuate features in element TB in Figure 8a) extending from the looped elements towards the central axis. Further, as shown in Figure 8a, the tines are arcuate

at the point that the tine extends from the ring. Further, Spence'692 teaches spring elements (MD) that can be used to resiliently move the tops of the tines away from each other (column 8, lines 25-30).



### ***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

11. **Claims 21 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Spence'692, as applied to Claim 20, in further view of Gifford, et al. (US Patent 5,904,697).**

12. Spence'692 teaches the limitations of Claim 21 and 22, except for a spiral orientation of the arcuate tines.

13. Gifford'697 teaches a clip with a spiral orientation of tines (499) (see Figure 40a, 40b) because the spiral configuration allows the clip to be interlocked with another clip. The length of the tines is longer than the perimeter of the body because this length is necessary for interlocking. Therefore it would have been obvious to one skilled in the art at the time the invention was made to use a spiral configuration because it allows the clip to be interlocked with another clip.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lindsey Bachman whose telephone number is 571-272-6208. The examiner can normally be reached on Monday to Thursday 7:30 am to 5 pm, and alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Hayes can be reached on 571-272-4959. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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MICHAEL J. HAYES  
SUPERVISORY PATENT EXAMINER